

November 11, 2005

Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

**Request for Review
of
SLD Administrator's Decision on Appeal**

Docket Number: 02-6
Applicant Name: East Orange Community Charter School
Billed Entity Number: 221142
Funding Year: 2004-2005
Form 471 Application Number: 415781
Funding Request Numbers: 1166544, 1166564, 1166586, 1166622, 1166665,
1166695, 1166709
Administrator's Decision Dated: September 12, 2005

Contact person:

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The East Orange Community Charter School hereby appeals the decision of the SLD in their Administrator's Decision on Appeal of September 12, 2005.

On December 17, 2004, the East Orange Community Charter School ("EOCCS") posted Form 470 Application Number 951400000483873 and on December 23, 2004, posted Form 470 Application Number 612610000485304. On February 3, 2004, after receiving no bids in response to the Forms 470, EOCCS elected to continue its current service on a month-to-month basis, and filed Form 471 Application Number 415781 requesting funding under the above FRNs.

On May 25, 2005, the SLD denied funding for all the FRNs listed above with the explanation: “Documentation was not provided to demonstrate that price was the primary factor in selecting this service provider's proposal.”

In the course of their review of this application, the SLD repeatedly requested documentation concerning bid selection. EOCCS sent repeated responses, but was not able to satisfy the SLD, because the SLD did not give explicit information on what documentation was required. Because the requests were unclear, the SLD found the responses inadequate, and repeated its requests. After repeatedly responding to the requests, EOCCS did not reply to the final request for information, because they did not know what further information they could supply.

The SLD did not request “documentation...to demonstrate that price was the primary factor.” The SLD requested “copies of all bids received” and “copies of documentation regarding bid selection.” In this case, since no bids were received, there were no bid copies, nor any bid selection documentation. Since there were no documents matching the SLD request, EOCCS sent no documents.

The SLD could have received the information sought by clarifying their request. The SLD needed only ask a simple question: “Were any bids received in response to the Forms 470?” While EOCCS had implied in its responses that no bids were received, EOCCS was not informed that the SLD required an explicit statement that no bids were received.

In the St. Stanislaus Order¹ and Fayette Order,² the Commission has held that in cases where EOCCS has responded, and the SLD has found the response lacking, the SLD should specify the information that is required. In this case, the SLD repeated its vague request, to which EOCCS did not correctly guess how to reply.

The Commission and SLD provide no guidance on documentation requirements when no bids are received in response to a Form 470. The SLD guidance on documentation retention mentions only “documentation supporting the award decision.”³ The Commission requires:

All documents used during the competitive bidding process must be retained. Beneficiaries must retain documents such as: Request(s) for Proposal (RFP(s)) including evidence of the publication date; documents describing the bid evaluation criteria and weighting, as well as the bid evaluation worksheets; all written correspondence between the beneficiary and prospective bidders regarding the products and service sought; all bids submitted, winning and losing; and documents related to the selection of service provider(s). Service providers must retain any of the relevant

¹ Order on Request for Review of St. Stanislaus Kostka Grade School, File No. SLD-142493, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 3361, 3362 (Com. Car. Bur. 2001)

² Order on Request for Review for Fayette County School District, CC Docket No. 02-6, DA-05-2176.

³ www.sl.universalservice.org/data/pdf/CompDocChecklist.pdf

documents described above; in particular, a copy of the winning bid submitted to the applicant and any correspondence with the applicant. Service providers participating in the bidding process that do not win the bid need not retain any documents.⁴

There is no mention of the documentation requirement when no bids are received in response to the Form 470. This application was denied due to lack of documentation in a case where no documentation requirements are spelled out in Commission rules or SLD guidance.

In this case, EOCCS supplied all requested documentation. What EOCCS did not know, and the SLD did not clarify in its correspondence or the guidance on its Web site, is that the SLD expected EOCCS to create documentation that there were no bids, and then submit that documentation.

EOCCS therefore requests that the Commission remand this application to the SLD for reconsideration, and direct the SLD to clearly ask EOCCS whether any bids were received in response to the Form 470.

Sincerely,



Daniel E. Riordan
President
732-530-5435

⁴ Fifth Report and Order, CC Docket No. 02-6, 19 FCC Rcd 15808 (2004)